IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 92 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

---

VENUS TRADING CO.

Versus

TORAN DYEING & PRINTING MILLS PVT. LTD.

---

Appearance:

1. COMPANY PETITION No. 92 of 2001

MRS SWATI SOPARKAR for Petitioner No. 1

MR RM DESAI for Respondent No. 1

---

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 22/04/2003

ORAL JUDGEMENT

1. This petition has been filed by M/s. Venus Trading Company under the provisions of Sections 433 and

434 of the Companies Act, 1956 [hereinafter referred to as the Act] praying that the respondent, M/s. Toran Dyeing & Printing Mills Pvt. Ltd., be wound up as the said Company is unable to pay its debts.

1.1 Over and above this petition, there are other petitions also, being Company Petitions No. 91, 93 to 106 filed against the respondent Company nu different debtors.

2. In this matter, the petitioner has served a statutory notice dated 17th February 2001 on the respondent Company under section 434 of the Act, calling upon the respondent Company to pay the outstanding dues of Rs.3,36,761/_ together with interest. The said Notice was sent by Registered Post A.D., but the envelope was returned with the postal endorsement as 'refused'. In the circumstances, the present petition has been filed with a prayer that the respondent Company be ordered to be wound up as the Company is unable to pay its debts.

3. In this petition, notice was issued and Mr. N.K. Majmudar, learned advocate appeared for the respondent. Learned advocate made a statement that the respondent Company is prepared to pay the admitted dues payable to the creditors. Thereafter, Mr. R.M. Desai, learned advocate appeared for the respondent Company. However, after all efforts by the respondent Company to show that it is able to pay its debts failed, this petition was admitted on 22nd November and an order with regard to advertisement was also passed on the same day. The said order was carried in appeal which was ultimately dismissed on 17th January 2003. Subsequently, on 24th January 2003, this Court directed publication of notice in Indian Express, Baroda Edition and Gujarat Mitra, Surat Edition.

4. Pursuant to the order dated 24th January 2003, the notice of the petition has been got advertised in the aforesaid newspapers on 2.2.03 and 5.2.03 as also in the official gazette dated 6th March 2003. Affidavit to that effect has also been filed on behalf of the petitioner.

4.1 Even after publication of the notice / advertisement, the respondent Company could not show that it is able to pay its debts.

5. I have heard Ms. Swati Soparkar, learned advocate for the petitioner and Mr. R.M. Desai learned advocate for the respondent Company.

5.1 Mr. R.M. Desai, the learned advocate for respondent Company submitted that the respondent Company has counter claim against the petitioning creditors. The same shall be considered by the Official Liquidator.

6. Looking to the facts stated hereinabove, it is clear that the respondent Company is unable to pay its debts as the Company has not paid the amount payable by it. In the circumstances, the respondent Company deserves to be wound up, and, therefore, the respondent Company is ordered to be wound up. The Official Liquidator attached to this High Court is appointed as an Official Liquidator for taking necessary proceedings for winding up of the Company and he is empowered to take all necessary actions under the provisions of the Companies Act and to distribute its assets in accordance with law.

7. Till the official Liquidator takes charge of the affairs of the respondent-Company, the respondent Company is restrained in any manner dealing with, disposing of, part with possession or creating third party rights or interest of the assets of the Company.

8. The Official Liquidator shall give intimation of this order to all the Directors of the Company so that the Directors can file statement of affairs as per the provisions of the Act. If the respondent-Company has occupied any land, the Official Liquidator shall also give intimation to the concerned local authority that the Company has stopped functioning so that financial liability of the Company may not mount up. After taking possession of the Company, a report shall be filed in this regard before this Court.

9. This petition stands disposed of as allowed.

[RAVI R. TRIPATHI, J.]
mathew